IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

CRL.A.No. 425 of 2007()

S.C.NO.1308/2004 ON THE FILE OF THE ADDL. DISTRICT & SESSIONS JUDGE (FAST TRACK COURT-I), THIRUVANANTHAPURAM.

APPELLANT:

AMMUKUTTY, C.NO.594,
VANITHA JAIL, NEYYATTINKARA, TRIVANDRUM

BY ADV. P.C.BABU[STATE BRIEF]

RESPONDENT:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MOHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Thankappan, J.

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Crl. A. No. 425 of 2007

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Dated this the 6th day of July, 2007

JUDGMENT

The appellant was charge-sheeted for the offences punishable under section 55(i) read with section 8 (2) of the Abkari Act. She was found guilty under section 55(i) read with section 8(2) of the Abkari Act and convicted thereunder and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,00,000/- and in default of payment of fine to undergo rigorous imprisonment for six months. The conviction and sentence awarded against the appellant are challenged in this appeal.

2. The appeal is filed through the jail authorities. Since no counsel is appointed to defend the case of the appellant, an advocate from the State Brief panel has been appointed to defend the case of the appellant.

3. The prosecution case against the appellant is that on 9-5-2002 at about 12.30 P.M. the appellant was found in possession of 5 litres of arrack in MO1 can having a capacity of 5 litres and carried the same along the road leading to Paruthoor river from Kurumancode in front of Paruthoor Anganwadi in Mudakkal Village and thereby committed the offences.

4. On the side of the prosecution PW1 to PW4 were examined and Exts.P1 to P7 and Material objects MO1 were marked. When the appellant was questioned under section 313 of Cr.P.C., she denied the allegation levelled against her and stated that she was innocent. The case of the appellant is that she was called to the Excise Range Office by PW1 and PW1 demanded Rs.500/-. She further stated that the case was falsely foisted against her after creating false documents, as she refused to accede his demand of giving bribe.

5. The learned counsel for the appellant submits that the trial court has committed serious error in accepting the evidence of PW2 independent witness to find the appellant guilty of the charges. The learned counsel also submits that the evidence of PW1 and PW4 cannot be relied on, as they are interested excise officials and their evidence is also inconsistent in nature. The learned counsel further submits that PW1 had not complied with any of the provisions contained in the Abkari Act as well as the Kerala Excise Manual in detecting the offence and taking samples.

6. Question to be considered in this case is whether or not the evidence adduced by PW1 and PW4 can be accepted to prove that the appellant was found in possession of MO1 can containing arrack?

7. To prove the case against the appellant, the prosecution mainly relied on the evidence of PW1 Excise Inspector and PW4 Preventive Officer. The evidence of PW1 and PW4 would show that when they reached in front of Paruthoor Anganwadi, they saw the appellant coming with a plastic can in her right hand and on seeing the excise party, she attempted to retreat. During cross-examination PW1 admitted that Ext.P1 mahazar was prepared in the handwriting of Preventive Officer Madhusoodanan, but PW4 during cross-examination admitted that Ext.P1 mahazar was prepared in the handwriting of Excise Guard Moni Rajesh. Similarly, during cross-examination PW1 admitted that Woman Police Constable was brought to the scene of occurrence from Attingal Dy. S. P. Office by sending a Preventive Officer with a letter and he went to the office of the Dy.S.P.in a jeep and brought her within 20 - 25 minutes. But, PW4 during cross-examination admitted that Woman Police Constable was brought to the scene of occurrence by Guard Navas and Preventive Officer Madhusoodanan and she was brought to the scene of occurrence within 45 minutes. The Woman Police Constable who arrested the appellant was not examined. As per Ext.P1 mahazar, there were some independent witnesses to prove that the appellant was found in possession of MO1 can containing arrack. But, PW2 was the only independent witness who was examined. His evidence would

show that he saw excise party taking away the appellant from in front of the Anganwadi and he did not see what is contained in MO1 can. It has come out in evidence that at the time of production of MO1 can before the court, there was only a portion of arrack and there was also the remnants of the label affixed therein containing the signature of PW1, appellant and the independent witness. During cross-examination, PW4 admitted that he did not see whether the can is sealed at the spot. If that be so, in the facts and circumstances of this case, the evidence of PW1 and PW4 excise officials and PW2 independent witness could not be accepted to prove that MO1 can was seized from the appellant. Hence, the conviction based on the testimony of PW1, PW2 and PW4 does not appear to be justified.

8. The learned counsel for the appellant relies on a decision of this Court reported in Narayani V. Excise Inspector (2002(3) KLT 725) and contend that it is the duty of the prosecution to prove that the sample and residue are kept in the proper custody till date of producing the same. It has come out in evidence that at the time of production of MO1 can before the court a portion of arrack was contained therein. In this regard, no proper explanation was given by PW1. There is also no evidence to show that the sample and residue were kept in the proper custody till the date of producing the same before the court. The appellant had a definite case that she was

called to Excise Range Office and PW1 demanded Rs.500/- and that the case was falsely foisted against her after creating false documents since she refused to accede the demand of giving bribe. Considering the facts and circumstances of the case, this Court is of the view that the evidence adduced by the prosecution to prove the case against the appellant is not free from doubt.

9. Hence, the conviction and sentence awarded against the appellant/accused in S.C.No.1308/2004 on the file of the Court of the Addl.District & Sessions Judge (Fast Track Court-I), Thiruvananthapuram are set aside and the appellant is acquitted. Therefore, she shall be released forthwith unless required in any other case.

K. Thankappan,
Judge.

K. Thankappan,J.

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Judgment
6-7-2007